



Regulation on 'cross-border portability' of online content services: Roaming for Netflix or the end of copyright territoriality?

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Is there any Internal Market problem?

- The online distribution of copyrighted content in Europe is dominated by **territorial licensing agreements** (*with some exceptions*)
- What are the **main impacts of territorial licensing** on the functioning of the Internal Market?
 - Limited cross-border portability
 - Consumers that lawfully subscribe to online services in a certain Member States are often unable to access the same service when moving, even temporarily, to another Member State
 - Limited cross-border trade
 - Some EU consumers cannot purchase goods or services that are instead available to other EU consumers
 - Even when the same good or service is provided in many EU Member States, consumers can access only their “national” offer, at local conditions and prices

Who is affected by this problem?

- **Consumers**

- Limited cross-border portability

- Short term migrants/travellers: 29mln Europeans when they travel abroad (<1mln per day; IA EC)
 - Short term migrants/travellers: 5mln Europeans per day (short<1year; Plum Consulting)

- Limited cross-border trade

- Limited/no access to content in other languages
 - Long term migrants: 14mln Europeans (Eurostat)
 - Linguistic minorities: 4mln Europeans (Plum Consulting)
 - People with foreign language skills: 90mln to 220mln Europeans (Eurobarometer)
 - Access confined to their national offers
 - Potentially all EU consumers

- **Content creators, right-holders and commercial users**

- Foregone cross-border business opportunities
 - VPN – Consumers willingness to pay

Regulation on ensuring the cross-border portability of online content

- **Aim**

- Enable consumers having lawful access to online content services in their country of residence to use the same services also when they are in another Member State for a limited period of time

- **Scope**

- Online services giving access to music, games, films, sporting events, and TV broadcasts
- Provided for payment of a service fee or those rendered without payment of money on condition that the provider verifies the Member State where the subscriber habitually resides

- **Key features**

- Regulation instead of a directive
- Art. 114 TFEU
- Legal fiction

Regulation on ensuring the cross-border portability of online content

- **Unsettled issues**

- Temporary presence: ‘temporarily present’ means a presence in a Member State other than the subscriber’s country of residence
 - **Verification mechanisms do matter**
- Verification mechanisms: information such as banking details, the payment of a licence fee for other services provided in the Member State of residence or the existence of a contract for Internet or telephone connection or the subscriber’s IP address
 - **Criteria on how to calculate the duration of a stay abroad** of service subscribers would also be required.

- **Possible outcomes**

- Strict application: modest impact (900,000 Europeans per day in 2015)
- Loose application: cross-border access (significant erosion of the principle of copyright territoriality)

Concluding remarks

- Non-legislative resolution approving the so-called '**Reda report**' in July 2015
 - Reaffirmation of copyright territoriality
 - No contradiction between territoriality and the goal of ensuring portability of content
- **Antitrust investigation on territorial licensing agreements** by US film studios and the largest European pay-tv broadcasters
 - Copyright holders and service providers would no longer be entitled to create an area of absolute territorial exclusivity
 - Consumers would be entitled to access online content services available in Member States other than their country of residence



Thank you for your attention.

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